

ISSUE DATE: June 24, 1997

DOCKET NO. P-421 et al./M-97-249

DOCKET NO. P-999/CI-97-912

ORDER FINDING AGREEMENTS NOT SUBJECT TO FILING DEADLINE AND OPENING  
INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request by U S WEST  
Communications, Inc. for Negotiation of  
Reciprocal Compensation Agreements for  
Existing Extended Area Service Arrangements  
Under 47 U.S.C. §§ 251-252

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In the Matter of a Commission Investigation To  
Determine How the Telecommunications Act  
of 1996 Affects Past and Future Extended Area  
Service Agreements

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SUBJECT TO FILING DEADLINE AND  
OPENING INVESTIGATION

**PROCEDURAL HISTORY**

On February 7, 1997 U S WEST Communications, Inc. (U S WEST) notified some 46 local exchange carriers with whom it had Extended Area Service (EAS) agreements that it believed the Federal Telecommunications Act of 1996<sup>1</sup> and rules promulgated thereunder by the Federal Communications Commission<sup>2</sup> required that those agreements be filed with this Commission by July 1, 1997 and that their terms be made available to competitive local exchange carriers. In the same letter the company made a formal request to renegotiate the EAS agreements under 47 U.S.C. §§ 251 and 252. On February 12, 1997 U S WEST informed the Commission it had taken this action.

On April 14, 1997 affected members of the Minnesota Independent Coalition, Frontier Communications of Minnesota, Inc., and Mankato Citizens Telephone Company filed a petition asking the Commission to find that their EAS agreements with U S WEST were not subject to the July 1 deadline and that they need not renegotiate those agreements.

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<sup>1</sup>Act of 1996, Pub. L. No. 104-104 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

<sup>2</sup>47 CFR 51.303(b).

On April 21, 1997 the Commission issued a notice requesting comments, especially on the issue of whether the agreements fell within the July 1, 1997 deadline set by the FCC in 47 CFR 51.303(b). The notice stated that the Commission's decision on that issue would largely determine future procedures for handling the case.

On April 30 and May 1, 1997 the following parties filed comments: MCI metro Access Transmission Services (MCI); U S WEST Communications, Inc. (U S WEST); United Telephone Company of Minnesota and Sprint Communications Company L.P. (Sprint); the Minnesota Department of Public Service (the Department); and AT&T Communications of the Midwest, Inc. (AT&T).

The matter came before the Commission on May 20, 1997.

## **FINDINGS AND CONCLUSIONS**

### **I. Background**

Extended Area Service (EAS) is toll-free interexchange service between exchanges whose geographic, social, and economic ties are so close that the Commission has determined they constitute a single local calling area. EAS agreements are the agreements between local exchange carriers establishing the interconnection and compensation arrangements necessary to provide this toll-free interexchange service. The agreements at issue were negotiated before the passage of the Telecommunications Act of 1996 (the Act).

The Act opened the local telecommunications market to competition by, among other things, requiring incumbent local carriers to interconnect with competitors on terms that are just, reasonable, and nondiscriminatory. 47 U.S.C. § 251 (c) (2). These terms are to be set by negotiation if possible and by state commission arbitration if necessary. 47 U.S.C. § 252 (a) - (c). Whether developed by negotiation or arbitration, once approved by the state commission, interconnection agreements must be made available by the incumbent to any competitive local exchange carrier requesting them. 47 U.S.C. § 252 (i).

The FCC has promulgated regulations requiring that all pre-Act interconnection agreements, including EAS agreements, be filed for state commission review under the Act. Pre-Act agreements between CLASS A carriers (carriers with annual revenues of at least \$100,000,000) must be filed by July 1, 1997.<sup>3</sup>

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<sup>3</sup>47 CFR 51.303(b).

## **II. Positions of the Parties**

Petitioners stated that they were not Class A carriers, that pre-Act agreements with non-Class A carriers were not subject to the July 1 deadline, and that the agreements at issue therefore did not have to be filed by July 1. They further argued that, to the extent that these agreements fell within the filing requirements of 47 CFR 51.303, the FCC had misinterpreted the Act and would be reversed on appeal.<sup>4</sup> They urged the Commission to defer requiring the agreements to be filed until the Court of Appeals had acted. Finally, petitioners argued that they were exempt from the duty to negotiate with U S WEST in any case under the rural telephone company exemption provisions of 47 U.S.C. § 251(f)(a)(A).

All parties agreed that pre-Act interconnection agreements with non-Class A carriers were not subject to the July 1 filing deadline. No one challenged petitioners' claim that they were not Class A carriers. Beyond this there was little consensus.

AT&T and MCI argued that the Commission should require the agreements to be filed for Commission review immediately, that delay was inconsistent with the spirit of the Act and the plain meaning of the regulations. Sprint proposed a filing deadline no later than December 1, 1997, for the same reasons.

The Department contended the agreements must be filed, but urged the Commission to establish a time frame consistent with the number and complexity of the agreements, arguing the Commission, like the FCC, should recognize the logistical burden these filings would impose on small companies and regulators alike.

U S WEST supported petitioners' request to defer the filing and renegotiation of these agreements and to clarify that their terms and conditions were not available to competitive local exchange carriers.

## **III. Commission Action**

It is clear that the petitioners are not Class A carriers and that these agreements are not subject to the FCC's July 1, 1997 filing deadline. The Commission will therefore decline to require petitioners to file their EAS agreements with U S WEST by the July 1 deadline.

It is equally clear that the treatment of EAS agreements under the Telecommunications Act of 1996 is a complex issue potentially affecting all providers of telecommunications services, not just the parties to this docket. The Commission will therefore open another proceeding, inviting all providers to participate, to explore and determine how the Telecommunications Act of 1996 affects past and future Extended Area Service agreements between Minnesota's local exchange carriers. The proceeding will also address the procedural vehicles and time lines to be used in reviewing any EAS agreements filed under the Act.

Initial comments will be due 45 days from the date of this Order; reply comments will be due 15

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<sup>4</sup>Iowa Utilities Board, et al. v. FCC, No. 96-3406.

days thereafter. These time frames should permit careful analysis without unduly delaying resolution of the issue.

### **ORDER**

1. The Commission finds that the Extended Area Service agreements between petitioners and U S WEST are not subject to the July 1, 1997 filing deadline set forth in 47 CFR 51.303.
2. This docket is hereby closed.
3. The Commission hereby opens a proceeding to explore and determine how the Telecommunications Act of 1996 affects past and future Extended Area Service agreements between Minnesota's local exchange carriers, Docket No. P-999/CI-97-912.
4. Initial comments in docket P-999/CI-97-912 shall be filed within 45 days of the date of this Order.
5. Reply comments shall be filed within 15 days of the expiration of the initial comment period.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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